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HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Vijay Kumar Shrivastava, J. &
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

CRIMINAL APPEAL NO.932 OF 1991

Appellant : Ganesh Yadav
Aged about 32 years
S/o Shri RAmji Yadav
Cultivator, R/o Jamatpura
PO - Dongargarh
Distt- Rajnandgaon
At present in Central Jail
Raipur

Vs.

Respondent: The State of Chhattisgarh

PRESENT:

Shri NK Chatterjee, counsel for the appellant as amicus curiae.

Shri JD Bajpai, Additional Public Prosecutor for the State.

J U D G M E N T

(Delivered on 9th August, 2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 17.09.1991 in Sessions trial No.30/91 of the Court of Shri Majhar Ali, Second Additional Sessions Judge, Rajnandgaon, whereby the appellant was convicted under Section 302 IPC for committing murder of his three year old daughter Pinky and was sentenced to rigorous imprisonment for life.

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2) Shri NK Chatterjee, learned counsel for the appellant appearing as amicus curiae has at the very outset stated that he does not assail the finding of the trial Judge that, Pinky aged about three years, daughter of the appellant had died due to asphyxia, as a result of drowning.

3) Briefly stated the prosecution case is that on 25.03.1991, wife of the appellant namely Triveni Bai had gone to Dongarhgarh with her three year old daughter Pinky to visit the fair and stayed with her maternal uncle - Tularam. The appellant went there and asked her to return with him. On refusal by his wife - Triveni Bai, the appellant got agitated, took his three-year-old daughter Pinky with him, and started for his home. On way, near village Dhasurakhar, the appellant threw his daughter in the well of Abdul Rashid Khan (PW1), which was witnessed by Subhan Bi (PW4). They started shouting, came to the spot and saw the dead body of Pinky floating in the water inside the well. The appellant also made an extra judicial confession before Abdul Rashid Khan (PW1) that he had thrown his daughter inside the well. Abdul Rashid Khan (PW1) lodged FIR Ex. P-1 at Police station - Dongargarh. The dead body of Pinky was retrieved from the well. Dr R Sadani (PW10) who conducted the autopsy opined vide Ex. P-10 that death of Pinky was as a result of asphyxia due to drowning. On completion of investigation, the accused/appellant was prosecuted under Section 302 IPC.

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4) The appellant abjured the guilt and claimed trial. In his examination under Section 313 of the Cr.P.C. he stated that fall of Pinky inside the well was accidental. However, he led no evidence in defence.

5) Learned trial Court relying upon the ocular testimony of Subhan Bi (PW4) and the extra judicial confession made by the appellant before Abdul Rashid Khan (PW1) soon after the occurrence, coupled with the medical opinion of Dr R Sadani (PW10), convicted the appellant under Section 302 IPC and sentenced him as aforesaid.

6) Shri NK Chatterjee, amicus curiae has argued this appeal only on the question of sentence, and contended that the appellant is undergoing incarceration since 1991 i.e. since more than 14 years. On the other hand, learned counsel appearing for the State supported the judgment and the sentence awarded by the trial Judge.

7) We have considered the rival submissions, and have also perused the record of the lower Court. We have given our thoughtful consideration to the testimony of Subhan Bi (PW4), who saw the appellant, in a rage throwing the three-year-old daughter in the well. Nothing has been elicited in the cross examination of the witness to rebut the testimony. The testimony of Abdul Rashid Khan (PW1) also corroborates the version of Subhan Bi (PW4). His testimony also proves that in his presence, the accused had made an extra judicial confession. The medical report of Dr R Sadani (PW10) proves beyond doubt that death of Pinky ~~is~~ was due to asphyxia as a result of drowning.

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The appellant in his statement under Section 313 of the Cr.P.C. took the defence that death of Pinky was due to an accidental fall inside the well. However, he led no evidence in support of his defence. Having thus considered the evidence in its totality, we are of the considered opinion that the trial Court has rightly relied upon the evidence led by the prosecution to hold the accused/appellant guilty under Section 302 of the IPC. The sentence awarded by the trial also calls for no interference.

8) In the result, the appeal is dismissed.

Sd/-
V.K.Shrivastava
Judge

Sdl-
Dilip Raosaheb
Deshmukh
Judge

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